

<b>PRE-APPEAL BRIEF REQUEST FOR REVIEW</b>		Docket Number (Optional)  060258-0281445											
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope addressed to "Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450" [37 CFR 1.8(a)]  on _____  Signature _____  Typed or printed name _____	Application Number  09/869,069		Filed  June 22, 2001										
	First Named Inventor  RASANEN et al.												
	Art Unit  2619	Examiner  ABELSON, Ronald B.											
<p>Applicant requests review of the final rejection in the above-identified application. No amendments are being filed with this request.</p> <p>This request is being filed with a notice of appeal.</p> <p>The review is requested for the reason(s) stated on the attached sheet(s). Note: No more than five (5) pages may be provided.</p> <p>I am the</p> <table style="width: 100%; border: none;"><tr><td style="width: 50%; vertical-align: top; padding-bottom: 10px;"><input type="checkbox"/> applicant/inventor.</td><td style="width: 50%; text-align: right; vertical-align: top; padding-bottom: 10px;">/Larry J. Hume/</td></tr><tr><td style="vertical-align: top; padding-bottom: 10px;"><input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)</td><td style="text-align: right; vertical-align: top; padding-bottom: 10px;">Signature Larry J. Hume</td></tr><tr><td style="vertical-align: top; padding-bottom: 10px;"><input checked="" type="checkbox"/> attorney or agent of record. Registration number 44,163</td><td style="text-align: right; vertical-align: top; padding-bottom: 10px;">Typed or printed name 703.770.7981</td></tr><tr><td style="vertical-align: top; padding-bottom: 10px;"><input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____</td><td style="text-align: right; vertical-align: top; padding-bottom: 10px;">Telephone number December 29, 2008</td></tr><tr><td></td><td style="text-align: right; vertical-align: top;">Date</td></tr></table> <p>NOTE: Signatures of all the inventors or assignees of record of the entire interest or their representative(s) are required. Submit multiple forms if more than one signature is required, see below*.</p>				<input type="checkbox"/> applicant/inventor.	/Larry J. Hume/	<input type="checkbox"/> assignee of record of the entire interest. See 37 CFR 3.71. Statement under 37 CFR 3.73(b) is enclosed. (Form PTO/SB/96)	Signature Larry J. Hume	<input checked="" type="checkbox"/> attorney or agent of record. Registration number 44,163	Typed or printed name 703.770.7981	<input type="checkbox"/> attorney or agent acting under 37 CFR 1.34. Registration number if acting under 37 CFR 1.34 _____	Telephone number December 29, 2008		Date
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<input type="checkbox"/> *Total of _____ forms are submitted.													

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re PATENT APPLICATION of:

Confirmation Number: 1005

RASANEN et al.

Application No.: 09/869,069

Group Art Unit: 2619

Filed: June 22, 2001

Examiner: ABELSON, Ronald

Title: FLOW CONTROL METHOD IN A TELECOMMUNICATIONS SYSTEM

**ARGUMENTS SUBMITTED WITH PRE-APPEAL BRIEF CONFERENCE REQUEST**

**MS AF**

Commissioner for Patents

P.O. Box 1450

Alexandria, VA 22313-1450

Sir:

In response to the Non-Final Office Action dated September 26, 2008 twice rejecting the pending claims, the due date for response being Monday, December 29, 2008, and concurrent with the filing of a second "Notice of Appeal" and second "Pre-Appeal Brief Conference Request," Appellants submit the following arguments for review by the Appeal Conferees. Claims 1, 3-12, 14, 18, 19, 21 and 23-30 are pending and are the subject of this Appeal. Claims 1, 5, 7, 8, 10-12, 14, 18, 19, 21, & 23-30 are independent.

**I. ADMINISTRATIVE COMMENTS**

The present non-final office action from which this Appeal is taken contains essentially identical rejections and applied art to those in the final rejection mailed over 21 months ago on March 16, 2007. Those final rejections were successfully traversed by the filing of a Notice of Appeal and Pre-Appeal Brief Conference Request, resulting in the Notice of Panel Decision mailed July 13, 2007, which reopened prosecution. Further, the non-final office action mailed April 17, 2008 is also essentially identical to the successfully traversed final office action of March 16, 2007.

Since this application was filed over seven years ago on June 22, 2001, Appellants have received *seven* non-final office actions and two final office actions; have filed an RCE and numerous claim amendments and requests for reconsideration, and now, with the presently filed communication, have filed two Notices of Appeal and two Pre-Appeal Conference Requests to prosecute this application.

Now being forced to contend with the same substantive rejections that were successfully traversed almost two years ago, the present application has again come full circle. Appellants request that the Examiner either allow this application or permit the Appeal to proceed in its present form to the Board of Appeals for final disposition.

## **II. REJECTIONS TO BE REVIEWED UPON APPEAL**

- A. ***Unpatentability rejections*** of claims 23, 24 and 27 under 35 U.S.C. §103(a), as allegedly being unpatentable over Chuah (US 6,400,695) in view of Shimojo (US 5,787,072)
- B. ***Unpatentability rejection*** of claims 1, 14, and 28 under 35 U.S.C. §103(a), as allegedly being unpatentable over Chuah in view of Shimojo and Edholm (6,600,721).
- C. ***Unpatentability rejection*** of claims 3, 4 and 6 under 35 U.S.C. §103(a), as allegedly being unpatentable over Chuah in view of Shimojo, Edholm and Akiyoshi (5,668,812).
- D. ***Unpatentability rejection*** of claims 7, 18 and 29 under 35 U.S.C. §103(a), as allegedly being unpatentable over Chuah in view of Shimojo, Williams (6,317,455) and Akiyoshi.
- E. ***Unpatentability rejection*** of claims 8-12, 19, 21, 25 and 26 under 35 U.S.C. §103(a), as allegedly being unpatentable over Chuah in view of Shimojo, Akiyoshi and Edholm.
- F. ***Unpatentability rejection*** of claims 5 and 30 under 35 U.S.C. §103(a), as allegedly being unpatentable over Chuah in view of Shimojo and Akiyoshi.

Due to page limits of this Request, each rejection above will not be separately analyzed. Instead, the Appeal Conferees are respectfully requested to analogize the general and specific distinctions identified below to all rejections on Appeal, e.g., the Arguments presented herein are directed only to the unpatentability rejections of independent claim 23 (*i.e.*, a portion of rejection II.A. above). The rejections of the remaining independent claims 1, 5, 7, 8, 10-12, 14, 18, 19, 21, and 24-30 are submitted as being deficient at least for the reasons discussed with respect to independent claim 23.

## **III. UNPATENTABILITY REJECTION OF CLAIM 23 UNDER §103**

The Examiner has maintained the rejection claims 23,23, and 27 as being unpatentable under 35 U.S.C. §103(a) over Chuah in view of Shimojo, and the rejection of other claims as being unpatentable over Chuah in view of Shimojo and various other references, including Akiyoshi, Williams, and Edholm.

Paragraphs 1-7 in the present non-final office action on appeal are essentially identical to paragraphs 1-7 of the previous non-final office action mailed April 17, 2008, and are essentially identical to paragraphs 1-6 of the final office action mailed March 17, 2007, which also indicated the allowability of claims 4, 5, and 30, but which has now been withdrawn.

The only substantive difference identified by Appellants in the present non-final rejection is that the Examiner has added the following statement on page 3, first paragraph: "Furthermore, multiple solid line routes [in Chuah' prior art] exist between Node-B's mentioned above". Appellants traverse this characterization of Chuah, which has been made by the Examiner in recognition that the dashed lines in Chuah FIG. 1 represent control signals, and not data signals.

In general, and for all the present rejections, Chuah in view of Shimojo at least do not teach or suggest limitations pertaining to the recitations of a third connection leg supporting flow control on the lower transmission protocol level, and tunneling lower-level flow control information through the lower

transmission protocol level of the second leg between the first and third legs in order to provide end-to-end flow control.

The Examiner asserts that Chuah teaches a first connection leg supporting flow control transmission protocol level underlying a user level; that Chua teaches an intermediate second connection leg not supporting flow control on the lower transmission level; and that Chuah teaches a third connection leg supporting flow control on the lower transmission protocol level. The Examiner continues by asserting that Shimojo teaches tunneling flow control information through the lower transmission protocol level of the second leg between the first and third legs in order to provide end-to-end flow control. Appellants traverse this characterization of the applied art.

### **Independent Claim 23**

Neither Chuah nor Shimojo, either alone or in combination, disclose, teach or suggest a mobile communications system that includes, *inter alia*, "...an intermediate second connection leg not supporting flow control on the lower transmission level, ***a third connection leg supporting flow control on the lower transmission protocol level, a first network element of the mobile communications system between the first and second legs, a second network element of the mobile communications system between the second and third legs, wherein the first and second network elements are configured to tunnel lower level flow control information through the lower transmission protocol level of the second leg between said first and third legs in order to provide end-to-end flow control...***," as recited in independent claim 23 (*emphasis added*).

In section 8 ("Response to Arguments") of the Official Action, the contends that the second leg in the claims "corresponds to an ATM connection represented by a solid line connection between fig. 1 between Node-B 'connected to box 2' and Node-B 'connected to box 4'. To support this allegation, the Examiner relies upon the previously-referenced statement on page 3, first paragraph, i.e., "[f]urthermore, multiple solid line routes exist [in Chuah] between Node-B's mentioned above". Appellants traverse this mischaracterization of the applied art.

In other words, the Examiner unreasonably asserts that "a second intermediate connection leg not supporting flow control on the lower transmission level" between the Node-B's is formed by a complex, hop-scotched chain of multiple connection legs in Chuah as follows: **(1)** a first connection leg between the first Node-B 6 (serving the mobile 2) and the RNC/FSU 10; **(2)** a second connection leg between tile RNC/FSU 10 and the UMSC 16; **(3)** a third connection leg between the UMSC 16 and the core network CN1; **(4)** most likely multiple legs between network elements within the core network CN1; **(5)** a further connection leg between the core network CN1 and the IWF 1; **(6)** a still further connection leg between the IWF 1 and the RNC 14; and **(7)** a still further connection leg between the RNC 14 and the second Node-B 6 (serving the mobile station 4).

The total number of legs in this purported "second intermediate connection leg not supporting flow control on the lower transmission level" is at least greater than six, and does not reasonably teach or suggest the recited "intermediate second connection leg." Moreover, there is no disclosure of the nature of these connection legs in Chuah, or of the configuration within the core networks. The Examiner unreasonably contends that the lack of disclosure of the nature and internal workings of Chuah's core networks "does not disprove that an ATM connection between fig. 1 between Node-B 'connected to box 2' and Node-B 'connected to box 4'." While what little is known of the configuration of Chuah's core networks may not ***disprove*** that an ATM connection exists, ***there is no evidence of record that such an ATM connection exists***. The Examiner has misplaced the burden of proof onto Appellants to prove a negative, i.e., that the undisclosed configuration of Chuah's core networks does not disprove that an ATM connection exists.

The Examiner admits that Chuah does not teach or suggest that "the first and second network elements are configured to tunnel lower level flow control information through the lower transmission protocol level of the second leg between said first and third legs in order to provide end-to-end flow control and thereby data integrity or the connection on the lower transmission protocol layer," and asserts that Shimojo makes up for this admitted deficiency by teaching a large number of switch nodes not having a flow control function along the route between two apparatuses having a flow control function. The Examiner also alleges that Shimojo teaches tunnelling of flow control information between the two apparatuses. Appellants respectfully disagree, and traverse this characterization of the applied art.

Generally, Shimojo relates to flow control between a pair of devices having an ATM network in between (*i.e., no real first, second, and third legs exist in Shimojo*, as in Appellants' claims). In contrast to Appellants' invention as variously claimed in the independent claims, flow control is provided between a pair of devices at the ends of the first leg, and flow control is also provided between a pair of devices at the ends of the third leg. The flow control information is tunnelled between the devices connecting the first and third legs through a second leg to allow complete, end-to-end flow control. Thus, Shimojo has only one end-to-end segment or leg (between a single pair of devices) from the flow control point of view, whereas in the claimed invention, there are three flow control legs, each between a different pair of devices.

Further, Shimojo teaches at col. 3:48-57 that ATM nodes which have no flow control function involve severe disadvantages regarding efficient utilization of network resources. Thereafter, at col. 4:29-33, Shimojo teaches that a flow control apparatus and a flow control method is provided whereby a flow control function can be added easily to switch nodes not having a flow control function. In addition, Shimojo teaches at col. 6:2-7 that "[t]he flow control apparatus according to the present invention acts effectively with a switch node not having a flow control function. FIG. 3 is a diagram illustrating the flow of the flow control information in an ATM network equipped with the flow control apparatus constructed according to the

present invention". Thus, *Shimojo explicitly teaches away from the claimed invention* by teaching that each switch node **must** be provided with a flow control apparatus.

*The solutions proposed by Shimojo exclude tunnelling*, and instead use one of two techniques, the so-called "credit method" (see col. 6:57 through col. 7:21) and the so-called "rate-based control" (see col. 7:22 through col. 8:19). Thus, *Shimojo explicitly teaches away from the claimed invention* in at least two aspects by teaching that *each* switch node **must be** provided with a flow control function (to avoid use of tunnelling), *and that Appellants' variously recited tunnelling function is undesirable* due, at least in part, to an assertion of inefficient bandwidth utilization.

The portion of Shimojo relied upon by the Examiner teaches that ATM nodes which have no flow control function involve severe disadvantages regarding efficient utilization of network resources. Shimojo further and explicitly teaches away from the invention by requiring that *each ATM switch node must be provided with a flow control function*. Moreover, since Chuah is completely silent about the use of flow control, there would be no motivation for a person having ordinary skill in the art to combine Chuah and Shimojo in the manner suggested by the Examiner. Accordingly, Chuah and Shimojo teach away from Appellants' invention as variously recited in the independent claims, and it is only through the use of improper hindsight analysis that these references would be looked upon to derive Appellants' novel and non-obvious claimed invention.

## V. CONCLUSION

In view of the above, reversal of the Examiner by the Appeal Conferees and allowance of claims 1, 3-12, 14, 18, 19, 21 and 23-30 on Appeal are respectfully requested.

Due Date: December 29, 2008

Respectfully submitted,

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Pre-Appeal Conference Request